

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RANDOLPH EDWARD GILBERT,	§	
#49143-177	§	
Movant,	§	
	§	No. 3:17-cv-01751-K
v.	§	No. 3:15-cr-00062-K-2
	§	
UNITED STATES of AMERICA,	§	
Respondent.	§	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Movant Randolph Edward Gilbert's motion to proceed *in forma pauperis* on appeal (doc. 13). For the following reasons, Gilbert's motion is **denied**.

I. BACKGROUND

Gilbert filed a motion to vacate, set-aside, or correct sentence on June 22, 2017. (Doc. 2.) On October 15, 2018, the Court denied the motion, denied a certificate of appealability (COA), and entered judgment. (Docs. 8-10.) On February 27, 2023, Gilbert filed a notice of appeal and a motion for leave to proceed *in forma pauperis* on appeal. (Docs. 11, 13.)

II. DISCUSSION

To proceed *in forma pauperis* on appeal, an appellant must show financial eligibility and a nonfrivolous issue for appeal. *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). Under Federal Rule of Appellate Procedure 24(a)(3)(A), an

appellant is ineligible for *in forma pauperis* status if the court certifies that the appeal is not taken in good faith. “Good faith” means that the issues on appeal are not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). When the underlying claims are “entirely frivolous and had no possibility of success,” the appeal is not taken in good faith. *Baugh v. Taylor*, 117 F.3d 197, 201-02 (5th Cir. 1997). The determination of whether good faith exists “is limited to whether the appeal involves legal points arguable on the merits (and therefore not frivolous).” *United States v. Moore*, 858 F. App’x 172, 172 (5th Cir. 2021) (per curiam) (quoting *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted)). A district court has discretion in deciding whether to grant or deny a request to proceed *in forma pauperis*. *Williams v. Estelle*, 681 F.2d 946, 947 (5th Cir. 1982) (per curiam) (citing *Green v. Estelle*, 649 F.2d 298, 302 (5th Cir. 1981)).

In this case, as discussed, the Court denied a COA on October 15, 2018. (Doc. 9.) At that time, the Court found reasonable jurists would not find the Court’s assessment of the constitutional claims was either debatable or wrong. *Id.* at 1 (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). The Court further found reasonable jurists would not find it debatable whether Gilbert’s § 2255 motion stated a valid claim of the denial of a constitutional right or whether the Court was correct in its procedural ruling. *Id.* In sum, Gilbert has failed to present a nonfrivolous issue for appeal, and his motion must be denied.

III. CONCLUSION

The Court finds Gilbert's appeal is not taken in good faith and DENIES his motion for leave to proceed *in forma pauperis* on appeal. Gilbert may challenge this finding by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit within 30 days from the date of this order. *See Baugh*, 117 F.3d at 202; *see also* Fed. R. App. P. 24(a)(5).

SO ORDERED.

Signed March 15th, 2023.



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UNITED STATES DISTRICT JUDGE